

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>THE TARRIER STEEL COMPANY,</b>	:	
	:	<b>Case No. 1:18-cv-0528</b>
<b>Plaintiff,</b>	:	
	:	<b>CHIEF JUDGE ALGENON L. MARBLEY</b>
<b>v.</b>	:	
	:	<b>Magistrate Judge Deavers</b>
<b>WESEX CORPORATION, et al.,</b>	:	
	:	
	:	
<b>Defendant.</b>	:	

**OPINION & ORDER**

This matter is before the Court on Cross-Claim Defendant CCL Label, Inc.’s (“CCL”) Motion to Dismiss Cross-Claim Plaintiff Wesex Corporation’s (“Wesex”) claim for indemnification against CCL (ECF No. 24) for failure to prosecute under Fed. R. Civ. P. 41(b). (ECF No. 43). For these reasons, CCL’s Motion is **GRANTED** and Wesex’s cross-claim for indemnification against CCL is **DISMISSED**.

**I. BACKGROUND**

Plaintiff Tarrier Steel Company (“Tarrier”) filed this lawsuit in state court in March 2018, alleging breach of contract against Wesex and unjust enrichment against CCL. (ECF No. 11). In April 2018, Wesex filed an answer and a cross-claim against CCL for indemnification. (ECF No. 24). CCL removed this action to federal court based on diversity jurisdiction, answered Wesex’s cross-claim and asserted its own cross-claim against Wesex for breach of contract and indemnification. (ECF Nos. 1, 6).

Wesex's counsel filed a motion to withdraw, which the Court granted and ordered Wesex to retain new counsel before the September 11, 2018 status conference. (ECF No. 12). When Wesex failed to do so, Magistrate Judge Deavers issued a Report and Recommendation that the Court enter default judgment against Wesex on Tarrier's complaint and CCL's cross-claim. (ECF No. 18). Wesex did not file an objection and the Court adopted the Report and Recommendation on October 17, 2018. (ECF Nos. 20, 22).

## **II. LAW & ANALYSIS**

Federal Rule of Civil Procedure 41(b) provides: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." District courts have "substantial discretion" to execute the tasks of "management of its docket and avoidance of unnecessary burdens on the tax-supported courts [and] opposing parties" served by Rule 41(b). *Knoll v. American Tel. & Tel. Co.*, 176 F.3d 359, 363 (6th Cir. 1999) (internal citations omitted).

This Court finds that Wesex's failure to prosecute its cross-claim against CCL provides sufficient support for the Court to exercise its discretion to dismiss the cross-claim pursuant to Rule 41(b). As CCL articulates in its Motion, Wesex has not responded to CCL's discovery requests, prosecuted this cross-claim, or otherwise participated in the action at all since 2018. (ECF No. 43 at 3). Wesex failed to comply with the Court's order to obtain new counsel and has been found in default. (ECF Nos. 12, 17, 18, 20). Nor has Wesex filed an opposition to this Motion. For these reasons, this Court finds CCL has provided sufficient support for its Motion to Dismiss Wesex's cross-claim for failure to prosecute under Rule 41(b) and the dismissal serves the interests of docket management and avoiding unnecessary burdens on the courts and parties in this action.

### **III. CONCLUSION**

For the foregoing reasons, CCL's Motion is **GRANTED** and Wesex's cross-claim for indemnification against CCL is **DISMISSED**.

**IT IS SO ORDERED.**

s/Algenon L. Marbley  
**ALGENON L. MARBLEY**  
**CHIEF UNITED STATES DISTRICT JUDGE**

**DATE: March 2, 2020**